

<b>MICHAEL REDDEN PC (S&amp;T ENTERPRISES),</b>	)	<b>AGBCA No. 2003-121-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Michael A. Redden, Esquire	)	
Michael Redden, P.C.	)	
2722 NE 33 <sup>rd</sup> Avenue	)	
Portland, Oregon 97212	)	
	)	
<b>Representing the Government:</b>	)	
	)	
Mary E. Sajna, Esquire	)	
Office of the General Counsel	)	
U.S. Department of Agriculture	)	
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Portland, Oregon 97204-2825	)	

**RULING ON BOARD JURISDICTION**

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May 1, 2003

**Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge WESTBROOK. Dissenting Opinion by Administrative Judge VERGILIO.**

This matter, received at the Board October 17, 2002, arises out of S&T Enterprises, AGBCA No. 2001-159-1. Michael Redden, attorney for the appellant in that appeal, filed a post-hearing brief and was subsequently discharged by his client. He then submitted to the Board a filing styled Notice of Claim of Lien (ORS 87.450) seeking \$6,860.50, plus statutory simple interest of 9% from October 8, 2002, until paid. The Board docketed the matter as AGBCA No. 2003-121-1, but informed the parties in the docketing letter that no authority for Board jurisdiction had been cited and the Board was aware of none. On February 24, 2003, the Board informed the parties that it wished to consider the question of jurisdiction before further proceedings were scheduled. Each party was directed to file with the Board a brief addressing that issue no later than April 7, 2003. The Government has submitted a Memorandum Regarding Board Jurisdiction. Mr. Redden informed the Board that he would not submit a brief.

The Board is a forum of limited jurisdiction. That jurisdiction is limited to four areas: (1) appeals under the Contract Disputes Act, 41 U.S.C. ' ' 601-613 (CDA); (2) appeals from final administrative determinations of the Federal Crop Insurance Corporation; (3) issues and appeals related to certain suspensions and debarments; and (4) appeals of administrative determinations of liquidated damages under the Contract Work Hours Safety Standards Act.

Lacking privity of contract with the Government, Mr. Redden cannot invoke CDA jurisdiction. On its face, his claim is unrelated to the Board's other three areas of jurisdiction. None of these grant the Board jurisdiction to place a lien on the proceeds of any potential recovery of Mr. Redden's former client in the yet to be decided appeal of S&T Enterprises. The Oregon statute cited by Mr. Redden in his Notice of Claim of Lien is inapplicable to an action at this Board either substantively or jurisdictionally. An attorney's lien is not enforceable against the United States. Pittman v. United States, 127 Ct. Cl. 173, 116 F. Supp. 576 (1953), cert. denied 348 U.S. 815 (1954).

Despite the dissent's different view of Mr. Redden's submission, we consider it our responsibility to analyze and respond in writing to matters submitted to this Board in terms of our jurisdiction and its limits. The dissent does not specifically suggest a manner of handling this matter. Referencing the notice of lien in the decision on the appeal of Mr. Redden's former client would be another way of responding. This approach has been taken under other circumstances. Leiden Corp., ASBCA No. 26, 136, 83-2 BCA && 16, 612 (attorney continued to represent the client); Color-Vue Electronics, Inc., DOTCAB No. 1740, 87-1 BCA && 19628 (attorney's motion to withdraw as counsel requested substitution of counsel be contingent upon payment of fees and costs). In this case, where the notice was filed separately by an attorney no longer representing the party, we considered it more appropriate to address it as a separate matter. Moreover, unlike the dissent, we do consider whether we have jurisdiction over a matter submitted to the Board, an issue the Board should resolve.

### RULING

The appeal is dismissed for lack of jurisdiction.

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**ANNE W. WESTBROOK**  
Administrative Judge

**Concurring:**

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**HOWARD A. POLLACK**  
Administrative Judge

**Dissenting Opinion by Administrative Judge VERGILIO.**

I view the submission from Mr. Redden differently than Government counsel and the majority. As an attorney, he filed with this Board a Notice of claim of lien with reference to state law (Oregon Statute ORS 87.450, 87.470). As submitted, the notice of lien is part of the administrative record in the related appeal of S&T Enterprises, AGBCA No. 2001-159-1. No Board action is requested or required by the given notice.

The submission is not a notice of appeal or request for the Board to docket the submission. The attorney does not ask this Board to enter judgment for him or to make any ruling with regard to the lien. The submission is a notice of a lien, said to be made pursuant to Oregon law, Against any sums payable to S&T Enterprises and/or Thomas Grajkowski in this proceeding. Given that the attorney submitting the notice does not assert Board jurisdiction and does not request the Board to take specific action or to enforce the lien, I do not characterize the submission as an Appeal. I find it unnecessary to conclude that the Board lacks jurisdiction over a matter for which no Board jurisdiction was asserted. The Board is not called upon to decide if the purported lien is enforceable under state law or against the United States.

I recognize, with the majority, the teaching of our appellate authority in Pittman v. United States, 127 Ct. Cl. 173, 116 F. Supp. 576 (1953); cert. denied, 348 U.S. 815 (1954). However, without a decision on the merits of the underlying appeal of S&T Enterprises (that is, the Board has yet to resolve the question of whether the contractor is entitled to any dollar amount of relief) or a request for specific action by Mr. Redden, it is premature to decide an issue the Board is not required to resolve.

I find that there is no claim or matter for the Board to rule upon; the Board's receipt of a notice of a lien under state statute does not require Board action.

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**JOSEPH A. VERGILIO**

Administrative Judge

**Issued at Washington, D.C.**

**May 1, 2003**